



Comptroller General
of the United States

51191

Washington, D.C. 20548

Decision

Matter of: Reliable Cleaning and Maintenance Corporation
File: B-258331
Date: January 9, 1995

Sam Zalman Gdanski, Esq., for the protester.
Harmon R. Eggers, Esq., General Services Administration, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that section 8(a) firm was improperly found to be nonresponsible is denied where there is no evidence of a violation of regulations or fraud or bad faith by government officials.

DECISION

Reliable Cleaning and Maintenance Corporation protests the actions of the General Services Administration (GSA) and the Small Business Administration (SBA) in connection with GSA request for proposals (RFP) No. GS-02P-94-CTC-0048, for complete janitorial services at a new federal office building in New York City. Reliable maintains that GSA improperly found it to be nonresponsible, and that the SBA improperly confirmed this determination.

We deny the protest.

The solicitation was issued on a competitive basis under section 8(a) of the Small Business Act.¹ After submission of best and final offers, Reliable was the low-priced, technically acceptable offeror. The contracting officer

¹Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V 1993), authorizes the SBA to enter into contracts with government agencies and to provide for the performance through subcontracts designed to assist "developing" small business concerns that are owned or controlled by designated disadvantaged individuals. See 13 C.F.R. part 124 (1994); New Life Group, Inc., B-247080.2, May 22, 1992, 92-1 CPD ¶ 463.

referred the question of Reliable's responsibility to GSA's credit and finance section for purposes of conducting a pre-award survey. After reviewing the matter, the pre-award survey team recommended no award based on numerous factors. In particular, the survey team found that the requirement here was beyond the scope of Reliable's experience and financial capacity, because (1) the value of the subject contract was approximately six times Reliable's 1993 annual sales; (2) Reliable had numerous past due accounts and slow trade payments as reported by Dun and Bradstreet; (3) the firm had four outstanding federal tax liens and one outstanding state tax lien; and (4) Reliable was able to obtain credit only from a nonbank source which required the firm to meet various unstated criteria as a condition to obtaining credit. The survey team also found that, in its proposal, Reliable had misrepresented the value and scope of its prior contracts and that, with regard to at least one contract, the firm had experienced performance difficulties.

These findings caused the contracting officer to have substantial doubt concerning Reliable's ability to perform the contract. Accordingly, pursuant to Federal Acquisition Regulation (FAR) § 19.809, the contracting officer referred the matter to the SBA. After review, the SBA concurred with the contracting officer's judgment, and advised both GSA and Reliable that it would not certify Reliable as responsible for purposes of this contract. Reliable maintains that this nonresponsibility determination was improper.

Because of the broad discretion afforded the SBA and agency contracting officials under the applicable statute and regulations, our Office generally does not review an agency's actions in connection with procurements conducted under the section 8(a) program. 4 C.F.R. § 21.3(m)(4) (1994). We will review a determination that an 8(a) firm is not responsible only where there is an allegation or some showing that government officials may have violated regulations or engaged in actions that amount to fraud or bad faith. Id.; Appletown Food Serv. and Management Ltd.--Recon., B-244519.2; B-244524.2, Nov. 7, 1991, 91-2 CPD ¶ 433.

Reliable does not allege that GSA or the SBA violated applicable regulations, and the record shows that the only applicable regulation, FAR § 19.809, was complied with--the contracting officer referred her concerns relating to Reliable's ability to perform to the SBA, which reviewed the matter and concurred in the agency's judgment.

Reliable does maintain that GSA and the SBA acted in bad faith in finding the firm nonresponsible. Where a protester alleges fraud or bad faith, it must submit evidence showing specific or malicious intent to harm the protester on the

part of agency officials. Deutsch Metal Components, B-255316, Feb. 17, 1994, 94-1 CPD ¶ 122. Reliable has not met this standard. Reliable's primary exhibit in support of this argument--an affidavit executed by the firm's president--does not show that the cognizant officials acted fraudulently or in bad faith. Rather, the affidavit is merely a statement of the president's disagreement with the assessment by another GSA contracting officer regarding the adequacy of the firm's performance on a prior contract.

Reliable has also submitted other documents to support its allegation, such as a letter from a nonbank financing entity and a letter from a supplier showing that the firm has a credit relationship with both concerns. These documents also do not show possible bad faith. The record contains an explanation of why Reliable's prospective financial resources were considered inadequate. Reliable's position that these documents warranted an affirmative responsibility determination thus constitutes no more than a disagreement with the agencies over which information should have received the most weight in their deliberations.²

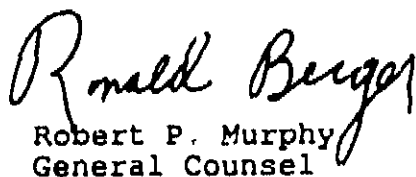
Reliable also maintains that GSA's contracting officer failed to adequately investigate the bases for her doubts concerning the firm's responsibility, and that this resulted in the SBA's receiving incomplete or inaccurate information bearing on the firm's responsibility. For example, the pre-award survey report disclosed a deficiency relating to a contract being performed by Reliable at the Social Security Administration. Reliable contends that, had the contracting officer adequately investigated the circumstances surrounding that contract, she would have found that, in fact, the firm's performance had been satisfactory.

This argument is without merit. Contracting officers generally are not required to verify information before making a responsibility determination. See generally BMY, Div. of Harsco Corp., B-233081; B-233081.2, Jan. 24, 1989, 89-1 CPD ¶ 67. Further, in the context of a section 8(a) procurement--where the SBA is the prime contractor and the 8(a) concern only a subcontractor to the SBA--a contracting officer does not even make a responsibility determination. Instead, the contracting officer--relying either on

²The record also contains a brief letter from the branch manager of a facility where Reliable was performing under a prior contract that states that the firm's performance had been satisfactory. The contents of this letter was fully rebutted by a subsequent letter from the same individual provided by the agency; he explains that the firm's performance had only been adequate with respect to one portion of a larger contract.

information contained in a pre-award survey report or other information--determines only whether there is substantial doubt concerning the ability of the 8(a) concern to perform; there is no regulatory requirement that the contracting officer investigate the facts underlying the information that gives rise to this doubt. Where there is such doubt, the matter is referred to the SBA, FAR § 19.809, which then determines whether the 8(a) firm--that is, the SBA's subcontractor--is competent to perform. 13 C.F.R. § 124.313. We conclude that the contracting officer's failure to go beyond the pre-award survey information was unobjectionable.

The protest is denied.


for Robert P. Murphy
General Counsel